

96-95

Olympic Peninsula Consultants

P. O. Box 2239

Forks, WA 98331

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Federal Communications Commission
Office of the Secretary

Fax Cover Sheet

Sent To: FCC Office of Secretary

From Jim Bennett

Fax#: 202-418-0187

Date: March 3, 2003

Total number of pages including the cover sheet: 9

You may contact me at the above phone number after April 21, 2003 or prior to that time at 360-288-2260 during the day or 360-288-0548 in the evening. The e-mail address stays the same.

Q.

Olympic Peninsula Consultants

Jim Bennett, President
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UBI# 601 824 014

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March 3, 2003

Federal Communications Commission
Office of the Secretary

Federal Communication Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

RE: APPEAL LETTER CC Docket Nos. 96-45 and 97-21

Contact Information:

Jim Bennett
PO Box 2239
Forks, WA 98331
Phone: 360-374-3310
Fax: 360-374-3310
E-mail: jbennett@olynet.com

SLD action being appealed:

Document Title: Administrator's Decision on Appeal - Funding ~~Year~~ 2002-2003,
dated February 6, 2003.

From 471 Application Number: 291855

Billed Entity **Number: 145262**

Funding Request Number: 833009

Explanation of Appeal: **Decision on Appeal:** Approved, but Denied for Funding.

Section of the decision letter from the SLD ~~that~~ is being appealed: "Upon review of the appeal, it was determined that you are listed as the contact person for the provider of services (Capacity Provisioning Inc, - SPIN 143025189) and you are also listed as the contact person on the referenced **Form 470** used to comply with the required 28-day bidding process for the services requested. Program rules dictate ~~that~~ if a representative or employee of a **Service** Provider serves as ~~the~~ contact ~~person on~~ a **Form 470** such action will have the effect of compromising the competitive bidding process and as a result denial of funding. In this case you are the service provider and you are listed as the contact person on the referenced **Form 470**. Consequently ~~your~~ appeal is denied."

Basis for the appeal: I have never been ~~an~~ employee of Capacity Provisioning Inc. and when I received the letter from the SLD, I was **surprised** to ~~find~~ **find out** that I ~~was~~ listed as their contact person. Once the bidding process was complete and Capacity Provisioning Inc. won the bid, it was determined that they didn't have a **SPIN** number. Since I was the contact person for the Port Angeles School District, I contacted Capacity Provisioning and told them how to apply for a **SPIN number**. In ~~filling~~ **filling** out their application they ~~misunderstood~~ and put the school district contact person down for their contact person.

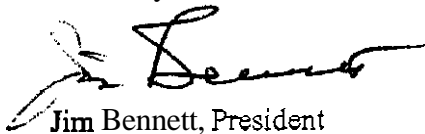
I have attached the following in support of ~~this~~ appeal:

1. The SLD decision letter
2. A letter ~~from~~ Capacity Provisioning, signed by Vice President, Craig **E. Johnson**, indicating ~~that~~ they have never employed me.
3. I have also enclosed **a** copy of ~~their~~ **Form 498** requesting a change in their contact person.

Based on ~~this~~ information I request that you **APPROVE FOR FUNDING**.

Thank you for your consideration. If you need any **additional** information, please feel free to ~~contact~~ me.

Sincerely,



Jim Bennett, President



Universal Service Administrative Company
Schools & Libraries Division

Administrator's **Decision** on Appeal - Funding Year 2002-2003

February 6, 2003

Jim Bennett

Re: ~~Port~~ Angeles School Dist 121

PO Box 2239

Forks, WA 98331

Re: Billed Entity Number: **145262**
471 Application Number: **291855**
Funding Request Number(s): **833009**
Your Correspondence Dated: **July 1, 2002**

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") **has** made its decision in regard to your appeal of SLD's Year Five Funding Commitment Decision for the Application Number indicated above. **This** letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for **appealing** this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a *separate* letter is sent.

Funding Request Number **833009**
Decision on Appeal: **Approved, but Denied for Funding**
Explanation:

- You have stated on appeal **that you** received a Funding Commitment Decision Letter dated July 16, 2002 stating that **this request** for discounts **was denied because** "The FRN is a request for Telecommunications service from a provider that does not provide Telecommunications on a common carriage basis". **You** claim **that** you classified the funding request in the wrong **service** category. **You** further stated **that** the category of service should have been identified **as** Internet access. **You** would **like** the category of service changed to Internet access and have discounts be provided for this funding request.
- Your appeal **has** brought persuasive information that the service category for this funding request should be changed to Internet access. Unfortunately, the **SLD** will **be** unable to provide discounts for your request for **the** reasons cited **below**.

- Upon review of the appeal, it **was** determined that you are listed as the contact person for the provider of services (Capacity Provisioning Inc. - **SPIN** # 143025189) and you are also listed **as** the contact person on the referenced Form 470 used to comply with the required 28-day bidding process for the services requested. Program **rules** dictate that if a representative or employee of a Service Provider serves as the contact person on a Form 470 such action will have the effect of compromising the competitive bidding process and **as** a result denial of funding. In **this** case you **are the** service provider and you **are** listed **as the** contact **person on** the referenced Form 470. Consequently **your** appeal is denied.

- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.¹ FCC rules **further** require applicants to comply with all applicable state and local competitive bidding requirements.² In the May **23,2000** *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the PCC upheld SLD's decision to deny funding where a MasterMind employee **was** listed **as** the contact person on the FCC **Form 470** and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.³ The FCC reasoned that **under** those **circumstances**, the **Forms 470** were defective **and** violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding **requests** were properly denied! Pursuant to FCC guidance, **this** principle applies to any **service** provider contact information on an FCC Form 470 including **address**, telephone and fax numbers, and **email address**.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing **unfair** competitive **advantage**.⁵ A competitive bidding violation and conflict of interest exists when an applicant's consultant, who is involved in determining the **services** sought by the applicant and who is involved **in the** selection **of the** applicant's service providers, is associated with a **service** provider **that** was selected

If you believe there is a basis for further examination of your application, **you** may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service. **FCC, Office of the Secretary, 445-12th Street SW, Washington, DC 20554**. If you are submitting your appeal to the FCC by other than United States Postal Service, check the **SLD** web site for more information. Please reference CC Docket **Nos. 96-45** and **97-21** on the first page of **your** appeal. The **FCC** must **RECEIVE your appeal WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER** for your appeal to be **filed in** a timely fashion. **Further** information and new options for filing **an** appeal directly with the FCC

¹ See 47 C.F.R. §§ 54.504(a), 54.511(a)

² See 47 C.F.R. § 54.504(a), (b)(2)(vi).

³ See *In re MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 23, 2000).

⁴ See *id.*

⁵ See, e.g., 48 C.F.R. § 9.505(a), (b).

can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site,
www.sl.universalservice.org.

We thank you for your continued support, patience, and cooperation during *the* appeal process.

Schools and Libraries Division
Universal Service Administrative Company

CC: Jim Jones
Port Angeles School Dist 121
216 E 4th St.
Port Angeles, WA 98362 - 3200



Capacity Provisioning Incorporated

116½ West 8th Street - (360) 460-9159

A Fiber Optic Company

Delivering Communications Services at the Speed of Light

03-01-03

TO WHOM IT MAY CONCERN:

This letter is to certify to any and all parties that Mr. Jim Bennett has never been employed, associated, contracted with or performed any work for or with Capacity Provisioning Incorporated.

Thank you,

Craig E. Johnson
Vice President
Capacity Provisioning Inc

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Federal Communications Commission
Office of the Secretary

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P. 8

FCC Form 498

Universal Service Administrative Company

MAR - 4 2003

Federal Communications Commission
Office of the Secretary

Approved by OMB
0950-0024
Avg. Burden Est.
Per Response: 1 hour

Service Provider Information Form (Please Read Instructions Before Completing Form)

Block 1: General Information

1. Full Legal Name of Service Provider Capacity Provisioning Inc		2. TRS Company Code (if applicable) NA	
3. USAC Service Provider Number (Assigned by USAC) SPIN 143625139		(See Instructions) PRIV	
5. Service Provider's Street Address, P.O. Box, or Route Number 116 1/2 West 8th Street			
City Port Angeles		State WA	Zip Code 98362
6. Federal Employer Identification Number FEIN 91-2117843		7. Indicate (X) Business Structure <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Other	
8. Name of Service Provider's Contact Craig E. Johnson		10. Telephone Number 360-460-8159	
11. Address of Service Provider's Contact - Street Address, P.O. Box, or Route Number 116 1/2 West 8th Street		11a. E-mail Address craig@cpfiber.com	
City Port Angeles		State WA	Zip Code 98362

Block 2: Schools & Libraries and Rural Health Care Programs Information

Service Provider's Schools & Libraries and Rural Health Care Programs Contacts

12. Name of Service Provider's Schools & Libraries Program Contact Craig E Johnson		13. Telephone Number 360-460-8159		14. FAX Number 360-565-8400	
15. Address of Service Provider's Schools & Libraries Program Contact - Street Address, P.O. Box, or Route Number 116 1/2 West 8th Street					
City Port Angeles		State WA	Zip Code 98362		
16. Name of Service Provider's Rural Health Care Program Contact Craig E Johnson		17. Telephone Number 360-460-8159		18. FAX Number 360-565-8400	
19. Address of Service Provider's Rural Health Care Program Contact - Street Address, P.O. Box, or Route Number 116 1/2 West 8th Street					
City Port Angeles		State WA	Zip Code 98362		

Schools & Libraries and Rural Health Care Payment Information

In accordance with FCC rules Part 54.515 and 54.511, USAC will offset service provider Schools & Libraries invoices against the provider's universal service support obligation at their request, and shall offset service provider Rural Health Care invoices against the provider's universal service obligation.

Is the service provider requesting to have their Schools & Libraries invoices offset against the provider's universal service obligation? ☐ Yes ☒ No

(SEE SPECIFIC INSTRUCTIONS FOR ITEMS 20 THROUGH 33)

20. Name of Remittance Company		
21. Address of Remittance Company - Address, P.O. Box, or Route Number		
City		Zip Code
22. Name of Remittance Contact		23. Telephone Number
24. Name of Remittance Bank (Required only if electing ACH or locked box transfer of funds)		24. FAX Number
25. Remittance Auto Clearing House (ACH) Number and bank account (Required only if electing ACH transfer of funds)		
ACH bank transfer number		Bank account number

FCC Form 498

Universal Service Administrative Company

Page 2

11. Name of Contributor Company		28. Contributor's TRS Company Code	
29. WAC Service Provider Number of Contributor Company			
30. Address of Contributor Company - Street Address, P.O. Box, or Route Number			
City		State	Zip Code
31. Name of Contributor Company Contact		32. Telephone Number	33. FAX Number
34. This ring is an: <input type="checkbox"/> — <input checked="" type="checkbox"/> —			

- For hand-delivered or messenger-delivered items, use the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002 (8:00 a.m. to 7:00 p.m.
ET)

If you are hand-delivering or messenger-delivering your appeal, please note the following:

- Documents enclosed in envelopes will not be accepted. Any envelopes must be **disposed of** before entering the building. Hand delivered **must** be held together with rubber bands or fasteners.
 - If a request for **confidential** treatment is clearly indicated on the first page of the filing, the staff at the filing counter will enclose the filing in a Commission envelope labeled "**confidential**."
2. Appeals and waiver requests may also be filed **electronically**, either by electronic mail (e-mail) or by **facsimile**. Items submitted by **electronic** mail will be considered filed on a business day if they are received at the FCC at any **time** up to **12:00 a.m.** (midnight) ET. Items received after that time will be considered received on the next **business** day. Similarly, **facsimile** transmissions will be considered **filed** on a business day if the complete transmission is received by any time up to **12:00 a.m.** (midnight) **ET**.
- Items **filed** by e-mail must be submitted to **CCBSecretary@fcc.gov**. Documents filed by **e-mail** can be submitted in any widely used word processing format, such as Adobe Portable Document Format (PDF), Word or **WordPerfect**. The FCC will **automatically** reply to incoming **e-mails** to confirm receipt.
 - Items filed by facsimile must be faxed to **202-418-0187**. The fax **transmission** should include a cover sheet listing contact name, phone number, and — If available — an e-mail address.

C. Special note on certain appeal deadlines:

The Federal Communications Commission (FCC) released Order FCC 01-376 which amends its procedural rules for filing appeals. The effective date of this Order is **January 24, 2002**. The Order will remain in effect until further notice.

This Order provides that appeals that were required to be received on or before September 10, 2001 under the previous 30-day filing period requirements are still subject to that 30-day filing period,